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VIA EMAIL AND REGULAR MAIL

MEMORANDUM

TO: All Parties to D.T.E. 01-31

FROM: Paula Foley, Hearing Officer

RE: Supplements to Information Request Responses After Close of Hearing

DATE: January 18, 2002

As parties are aware, in this proceeding, all exhibits except record request responses were entered into evidence on the final day of hearings, January 3, 2002 (Tr. 4, at 742-745).¹ On January 4, 2002, I emailed to the parties an exhibit list indicating all exhibits that had been entered into evidence the previous day. On January 15, 2002, in addition to Network Plus' response to record request DTE-1, Network Plus forwarded to the Department a supplemental response to information request VZ-NP-1-1.² On January 17, 2002, the Department received an email request from the Attorney General for Verizon to provide a supplemental response to information request AG-VZ-5-4.³ In his email, the Attorney General also requested that

¹ Record request responses will become part of the evidentiary record in this proceeding unless challenged as unresponsive and expunged in whole or part. D.T.E. 01-31, Hearing Officer Memorandum Regarding Ground Rules, Service List, and Procedural Schedule at 1 (May 7, 2001); Tr. 4, at 746.

² Network Plus' original response to VZ-NP-1-1 was entered into evidence at the hearing held on January 3, 2002, as Exh. VZ-NP-1-1.

³ Verizon's original response to AG-VZ-5-4 was also entered into evidence at the hearing

(continued...)

Verizon's supplemental response to AG-VZ-5-4, when provided, be marked as an exhibit and moved into evidence.

Pursuant to 220 C.M.R. § 1.06(c)(5), parties are under a continuing duty to amend seasonably an early response to discovery if the party obtains information that the response was incorrect or incomplete when made, or that the response, though correct when made, is no longer true or complete. However, the submission by Network Plus and the request by the Attorney General raise the issue of supplementation of information request responses after the close of hearings. Pursuant to 220 C.M.R. § 1.11(7), the Department may, for good cause shown, allow the parties to file evidentiary documents of any kind at a time subsequent to the completion of hearing. In addition, under 220 C.M.R. § 1.11(8), no person may present additional evidence after having rested nor may any hearing be reopened after having been closed, except upon motion and showing of good cause. Lastly, under the ground rules for this proceeding, exhibits offered after the close of the hearings must be accompanied by a motion to reopen the record and supported by appropriate affidavits. D.T.E. 01-31, Hearing Officer Memorandum Regarding Ground Rules, Service List, and Procedural Schedule at 3 (May 7, 2001). If objected to by any party, such exhibits labor under a heavy burden of untimeliness and will only be marked and admitted into evidence for good cause shown. Id.

I conclude that both Network Plus' submission of its supplement to VZ-NP-1-1 and the Attorney General's request for supplementation of AG-VZ-5-4 are procedurally improper at this stage of the proceeding. Information requests are pre-hearing discovery designed to facilitate the hearing process. See 220 C.M.R. § 1.06(c)(1). If either Network Plus or the Attorney General seek to introduce additional evidence and/or exhibits at this stage (i.e., after hearings have closed), they must do so by appropriate motion according to the procedures discussed above.

If you have any questions, please contact me at (617) 305-3608.

³(...continued)

held on January 3, 2002, as Exh. AG-VZ-5-4 (public version) and Exh. AG-VZ-5-4A (proprietary version).